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The collective labour relations model applied to social welfare programmes

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THE COLLECTIVE LABOUR RELATIONS MODEL APPLIED TO SOCIAL WELFARE PROGRAMMES.

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The Collective Labour Relations Model Applied To Social Welfare Programmes.

CHAPTER 1: INTRODUCTION

Our terms of reference call for an assessment of the need for legislation to assist in the organization of welfare rights groups. What needs will be served if a system like the current Canadian labour relations regulatory scheme is applied in welfare administration? These are the questions we try to answer, and we outline, in tentative form, a legislative approach.

* * *

The system of social welfare payments in Canada is subjected to constant criticism both by those who depend on the system and those who pay for it. Recipient complaints are founded on their sense that

> ... Canada's social policies are not based on the assumption that assistance to a decent standard of living is a right. Many programs are still based primarily on the obsolete concept of "relief", often at an inadequate subsistence level. Programs intended to be remedial are often palliative, at best.[1]

From this alleged misconception flow two types of defect in the welfare system. First, the level of assistance is not adequate for recipients even to enjoy the quality of life at what they perceive to be the lowest level tolerable in their community. In short, the income of recipients remains below the poverty line.[2] The costs of this state of affairs are identified in the Brief of the Department of National Health and Welfare to the Special Senate Committee on Poverty.[3]

> To be poor does not signify only lack of income, it means lack of opportunities -- for good health, for education, for meaningful employment, for suitable recreation and so forth. Poverty is characterized by a depressing and harmful physical and social environment -- both indoors and outdoors. It leads to a sense of failure, a feeling of alienation and generates personal and social pathologies.

The most serious costs for society generally, alienation, bitterness and feelings of personal unworthiness are borne regardless of whether the recipient attitudes to the level of subsistence are accurate or not.

The second defect which recipient groups see as an outcome of the imputed welfare policy is that the administration of welfare payments is harmful to welfare recipients as persons. The right to payment is made dependent on conditions unrelated to the causes of their plight. Welfare is administered without the procedural protections imposed on other government agencies. They assess the cost of this defect as a reduction of recipients' humanness. Professor Bendich, in describing the plight of welfare recipients in the United States, ascribes an effect to administrative practices which conforms to this notion.[4]

> Free men are those who have and use the power to manage their affairs in accordance with their own judgment; they determine for themselves whether their needs are being met. That must be the direction in which

> power is accountable in a free society. But the basis upon which welfare payments are distributed is directly contrary to these assumptions. Need is judged not by the recipient of the grant, but by its dispenser; moreover, the grant varies with the dispenser's judgment of the existence, size and character of the need and also the character of the recipient. The means test or charity principle upon which welfare is based, thus violates and is utterly incompatible with the right to privacy because the latter is centrally concerned with the freedom to be an individual, a functioning member of a self-governing community, while the means test renders impossible "the direction of one's affairs, the whole basic principle of self-management".[5]
> (footnote omitted)

In counter-balance to these criticisms there are less clearly articulated societal attitudes which put pressure on legislators against expensive public welfare programmes. It is probably not at all inaccurate to state that, prevalent in our social values are, first, the underlying philosophy that people are poor through their own fault and, second, the attitude that welfare personnel must be watch dogs of public funds. It is observable that there is substantial public support for the idea that welfare recipients are the cause of their own plight and that minimal assistance, and the imposition of strict controls are necessary conditions of public support of the poor.

A mere statement of the two viewpoints indicates that neither the erasure of poverty nor the alleviation of discomforts caused by it are absolute political goals to be obtained at any cost.[6]

Thus it is difficult to ascertain with certainty the specifics of government policy toward the problem of poverty and this, of course, makes it very hard to evaluate the desirability of the regulation of recipient collective action. Government policy should be the standard of assessment in a study of this kind, and it is beyond our scope to second guess the legislature by formulating what we might think should be the goals of a welfare system. The legislative policy regarding poverty should be a "given" in this enquiry and our assessment of the usefulness of the regulation of collective action must be in terms of whether it enhances the possibility of achieving the established goals. What, then, are the goals in light of which our proposals are to be assessed?

We can look to existing legislation for indications of the broad goals of the Canadian welfare system, but we must also concern ourselves with the goals of welfare recipients who have already, without regulation or assistance, begun to organize themselves. The whole point of encouraging collective action is increased participation. So, to be viable, any proposal for regulated collective action must take account of the goals of the recipients. If their goals are not served they will simply not participate. What recipient groups want is more money, more freedom and more respect, and self-respect, for their members. To the extent that these goals are also the goals of welfare legislation in Canada they provide a standard against which we can assess the usefulness

of a proposed system of collective relations in welfare administration.[7]

The Canada Assistance Plan[8] formulates the policy of government toward social welfare and this, in turn, is reflected in provincial schemes. At a theoretical level, the Plan rejects the notion that the just treatment of persons both in terms of goods and personal relationships is identified "with getting what is deserved."[9] It recognizes that people need money to survive, whatever the cause of their poverty. This is coupled with the recognition that people ought to be treated in a way that acknowledges their dignity or worth. In short, the Plan is concerned about the material well-being and the freedom of persons.[10]

One of the stated objectives of the Canada Assistance Plan was to ensure that recipients' actual needs are considered in determining the level of assistance. The Minister of National Health and Welfare, introducing the Plan in the House, stated:

> In addition to providing for the integration of existing programs, the plan will provide for the payment of assistance on the basis of need. The needs test considers the actual requirements of individuals and families as well as their resources in determining the amount of assistance to be provided. This is in contrast to the means test which relates assistance to income and assets.[11]

In its brief to the Special Senate Committee on Poverty[12] the Federal Department outlined the objectives of the Canada Assistance Plan. The first and presumeably primary

purpose stated was "to assist the provinces in providing adequate levels of assistance to persons in need".[13] Further, the second and third objectives mentioned were aspects of the goal of ensuring well-being for the poor, but over the long term. The Plan, it is stated, should encourage the growth of welfare systems which remove the cause of poverty and should encourage "welfare departments to prepare and motivate recipients to take advantage of opportunities for vocational training [and] rehabilitation services...".[14]

This policy of ensuring material well-being of the poor is shared by the provinces. The Ontario Department of Social and Family Services brief to the Special Senate Committee on Poverty states:

> Income inadequacy and income insecurity are common to large numbers of people who cannot improve their relative positions by themselves. Social assistance provides the basic support essential to those who are for one reason or another unable to maintain themselves. Some are incapable of offering their services in the labour market and are likely to be dependent on government transfer payments for long periods of time. Others are in and out of the labor force and are intermittently dependent. Many other persons with low incomes are fully employed or are employed for substantial portions of the year. [15]

The greatest threat to the second apparent goal of the Canada Assistance Plan, the preservation of personal freedom, lies in a recipient's feeling of powerlessness to challenge an administrator's decisions. Not only does this inhibit his freedom to speak out against decisions which he considers to be unwise, unjust or illegal, it inhibits his freedom to

engage in any activity because he is uncertain whether it will offend the administrator. If a recipient is powerless to challenge administrative decisions he cannot run the risk of provoking an adverse decision. Welfare administration is especially conducive to inhibitions about acting in any visible way because there has grown up in welfare administration a "mystique of esoteric knowledge and technique [which] shields the bureaucratic management of benefits from ... the assertions of client claimants."[16] The role of expertise in granting benefits means that decisions cannot be challenged or judged by the recipient because expertise is, by its very nature, obscure. As well as the obscurity inherent in the process of expert decision-making there is the added danger that administrators can "withhold or dispense information about their own procedures which [recipients] require in order to formulate any challenge to bureaucratic action."[17] In short, either by design or as a matter of inevitability most administrative activity "is not visible from the vantage point of clients,"[18] and the resulting ignorance leads to uncertainty and fear, and to a loss of true freedom.

Professor Handler, describing the experience in the United States, has identified some of the factors which create the need for expertise and which in the exercise of that expertise create powerless on the part of recipients.

> When eligibility criteria are set forth in the legislation ..., the criteria often conflict, or are vague, and the agencies have a choice over which criteria to choose in any given situation. Or, the statutes are silent as to critical substantive areas, giving the agencies an even freer hand. In the day-to-day administration, the power granted through delegations of authority is increased by the agency practice of deciding issues on a case-by-case basis rather than promulgating and publishing rules in advance, the discretionary powers of enforcement, the power to delay, investigate and harass, and the fact that people dependent on welfare are over anxious to please officials rather than run the risk of punishment. [19]

Although this is not a description of Canadian conditions, many of the same phenomena are found in the administration of Canadian welfare systems.

The reinstatement of freedom to act is a goal of the Canada Assistance Plan. The Plan does impose a procedure for appeals upon the provinces, but it is not at all clear that this has reduced the uncertainty and fear which inhibit recipient action. The Canadian Civil Liberties Association identified the problem, and the policy of the federal government in meeting it:

> What about the complex of procedures and rights in the body of the law which deals especially and daily with most impoverished people in our society? Do the laws of special application to the poor provide the procedural fairness that characterize the laws of general application to everyone?
>
> In this regard we applaud the initiative undertaken by the federal government in the Canada Assistance Plan. In order to promote procedural due process for the impoverished recipients of federal welfare funds, the participating provinces must provide a procedure for appeals. 20

Again, the brief to the Special Senate Committee by the Federal Department makes it clear that the Plan's objectives include encouraging "the recognition of assistance as a right under specified statutory conditions ..."[21]

Freedom in the context of this study is freedom from arbitrary action. Whether the appeal procedure which the Canada Assistance Plan requires the provinces to undertake to provide can succeed in removing illogical and inhibiting administrative action is an open question. It is clear though that such a result is a goal of the welfare system in Canada.

Psychological well-being, or self-respect, as well as material well-being, is important to welfare recipients. While self respect is dependent on material welfare and upon freedon it can best be treated as a separate goal or objective for purposes of our proposals. Self-respect is a clear goal of recipient groups, but it is much less clearly a goal of the Canada Assistance Plan. It can be argued that in providing incentive for recipients to use "rehabilitation services and other measures designed to return them to employment"[22] the Plan is concerned with the enhancement of recipient self-respect, but it is probably wrong to suggest that any job performed by those capable of working enhances self-respect.[23] Moreover, a large percentage of recipients are not potential members of the work force. The old, the blind, children and single parents are all to a greater or lesser degree incapable of earning sufficient to meet their

needs.[24] They are in a state of dependency and, by that fact alone, are subject to loss of self-respect.

Insofar as the Canadian system of social welfare is designed to break the cycle of poverty (and that goal is evident from the statements explaining the philosophy of the Canada Assistance Plan)[25], it can be argued that psychological well-being is a desired end. In this light, the welfare system does seek to retain and even instill in recipients a sense of personal identity and purpose. It does seek to avoid the creation of that feeling of hopelessness, helplessness and alienation so common among recipients, particularly long term recipients.

Three goals of a welfare system which have been expressly or impliedly adopted as goals of Canadian social welfare have been identified. They are material well-being and psychological well-being and freedom from arbitrary action. These are goals of government but they are goals with which recipients and recipient groups could agree. In the working out of the details of any scheme to attain these ends conflict might well arise, but it is clear that a regulated scheme of collective recipient action will not be acceptable if it impairs the likelihood of the welfare system achieving these three goals. In short, any proposed changes in the welfare system, based on the collective labour relations model, must be assessed in terms of how far they enhance these uncertain and interdependent goals.

We must ask whether regulated collective action by recipients following more or less the labour relations model, would work toward the achievement of these goals more effectively than non-regulation does. To make the enquiry intelligible, we turn now to a consideration of the essential institutions and practices in collective labour relations.

CHAPTER 2:

COLLECTIVE LABOUR RELATIONS: INSTITUTIONS & PRACTICES

Labour Unions in a form not unlike the present one had come into existence in England in the first half of the nineteenth century and were established in Canada before the turn of the century. The early unions were characterized by the judges at the time as illegal associations and their activities were condemned as conspiracies. But the labour movement flourished because working men sensed, quite correctly, that by united action they could bring considerable economic pressure to bear on their employers. In a competitive economy, employers faced with a concerted withdrawal of labour and a demand for higher wages had to make a judgment whether to continue the economic battle or grant higher wages. They had to decide which would cause greater economic harm to the enterprize. The union organization had to be strong enough to convince the employer that he could not win the economic battle and that the lesser of two evils would be to grant higher wages. If the union was organized so widely that it could ensure an equal rise in the wages paid by the employer's competitors resistance would be much lower. Thus from the very beginning there was a clear economic advantage to the unions in being large, well organized and well administered.

The growth of trade unionism was, however, artificially promoted to some degree when during and after World War II the federal government and the government of each of the Canadian provinces passed labour relations legislation,[26] which actively encouraged union organization and ensured

orderly collective relations.

It is the system of industrial relations established under modern labour relations statutes to which we look for a possible model in the welfare system. It is crucial to bear in mind that the unions which were encouraged by, and have grown under, this legislation did, nevertheless, play an important economic and political role before the statutory structure was established and even in the face of legal obstacles. Labour unions are not artificial plants which grow only in very favourable legislative conditions. They have deep roots, with strong traditions and good economic reasons for existence, and it is this, rather than the fact that they are part of a statutory scheme, which makes them viable.

The foundation stone of the statutory structure of labour relations in Canada is the right of any employee to join the trade union of his choice. In the normal course of events a trade union, on its own initiative, or at the invitation of a number of employees in an industrial plant, sends an organizer to attempt to persuade as many employees as possible to adhere to the union. The organizer does not have access to the company premises. Usually, however, sympathetic employees will make some attempt on the premises to persuade their fellows to become members of the union, although strictly speaking the law does not protect organizing activities on the employer's premises. To make effective the employee's right to join a trade union of his choice, Canadian labour relations

legislation prohibits the employer from discriminating against an employee in any way because of his adherence to a union or because of any lawful activities on behalf of the union. For the same reason union organizers and members are prohibited from bringing unlawful pressure to bear on other employees. The union may only organize through persuasion. It is prohibited from exerting economic pressure on the employer and thus forcing him to support organization among his employees.

Every Canadian labour relation statute establishes a labour relations board, which is an independent tripartite tribunal.[27] Tripartite composition implies that labour and management interests are represented and the chairman is a government appointee with no affiliation on either side. One function of the labour relations board is to police the organization process to ensure that no prohibited activities have been indulged in by either employers or unions. It also certifies any union that achieves majority support from the employees of a particular employer.

The certification process consists of two separate decisions. The board must determine what is the "appropriate unit" for certification.[28] It must determine, in other words, what group of employees is, by reason of common work interests, appropriate to be represented by a single union. Having determined the appropriate unit the labour relations board must then ascertain whether the applicant union has majority support among the employees in the unit. If it does the applicant union then becomes the certified bargaining agent. The board may subse-

quently terminate bargaining rights if the union loses majority support or it may substitute another union which has won majority support from the incumbent.

Once a union is certified the employer is required by law to "bargain in good faith"[29] with the union.[30] In the words of the Privy Council Task Force on Labour Relations,[31] the duty to bargain in good faith in Canada

> is supported, not by an elaborate jurisprudence on what must, may, or must not be bargained and on the legitimacy of strategies, but by a system of third party intervention to try to bring the parties into agreement where other inducements to an agreement have not worked.[32]

Bargaining continues with or without the intervention of a government conciliation officer until there is an agreement or until the parties reach an impasse. A conciliation officer has no power to compel either side to agree to anything. Where the parties reach an impasse, after the delaying provisions of the labour relations of legislation have been observed, the impasse may be broken by a strike.

At the final stage the strike is a test of strength similar to that in which management and labour engaged before the evolution of the present statutory structure. It is basic to the collective relationship that the ultimate resolution of negotiations between the parties takes this form, even where there has been no overt mention of strike between them. The Woods Task Force states:

> One cannot assume a correlation between the results of collective bargaining and any particular concept of equity. Collective bargaining is basically a power struggle; the outcome is more a reflection of the relevant economic positions of the protagonists

> than of the merits of their claims and counter-claims in terms of some standard of equity.[33]

Nevertheless the Woods Task Force, like many commentators, supported the power struggle as the most acceptable means of forcing the wage bargain. In spite of inconvenience and hardship to the public the Task Force concluded that;

> Although this system may seem costly it may be more healthy and less expensive in resolving labour-management disputes than any other method.[33a]

and that

> Strikes and lockouts are an indispensable part of the Canadian industrial relation system and are likely to remain so in our present socio-economic-political society.[34]

In labour relations, then, the strike is the essential feature of collective bargaining. A strike in itself is simply a concerted withdrawal of the labour needed by an employer to carry on his enterprise. On the other side it involves a loss of wages by the employees and, very often, only these two factors enter the power struggle. Where the employer is able to replace his labour force,and attempts to do so,picketing is employed as a means of preventing access to the plant and thus of making the strike effective. Picketing is, to a limited extent, legal. Secondary picketing, product boycotts or appeals to public opinion may also be utilized where the primary weapon of withdrawal of labour does not effectively halt production. All of these however, particularly the appeal to public opinion, are minor means of bringing economic pressure to bear, subsidiary to the withdrawal of labour.

In some situations a purely economic analysis of the relationship between the union and the employer during a strike is inadequate. Either or both sides may take the view that some question of principle is involved, and in such a situation picketing and other appeals to public sympathy may serve a purpose beyond merely making the withdrawal of labour effective. But such concerns are at best peripheral to the system of collective labour relations.

Not every collective bargaining relationship is dependent upon the strike ultimately to break an impasse in negotiations. In the public sector there are a number of unions and employers which, when they fail to reach an agreement, accept compulsory arbitration to determine the contents of the collective agreement. "Interest" arbitration of this kind may work satisfactorily as long as it is only employed in a limited part of the economy. The problem is that the arbitrator has no clear standards to guide him in reaching his decision. He must rely on prevailing wage rates and other collective agreement provisions that have been negotiated in the private sector. Thus, the system of compulsory arbitration of interest disputes can only work as long as there continues to be a sufficiently wide private sector in which the wage bargain is settled by free collective bargaining to provide a standard against which the demands of the parties to compulsory arbitration can be judged.

Once the parties' interests have been settled, either by collective bargaining or compulsory arbitration, the concern

of collective labour relations is the administration of the collective agreement. Every collective agreement provides a grievance procedure. Individual employees who feel they have not been treated consistently with the provisions of the collective agreement are ensured of a hearing by officials of the employer with authority to correct the situation. Usually the first stage of the grievance procedure is very informal, perhaps a simple verbal complaint by an employee to his foreman. An employee who is not satisfied by the response at the first stage may carry his complaint, usually in writing, to the next level of management.

For our purposes the important point is that from the second stage of the grievance procedure onward the employee is supported by the union which is certified as bargaining agent. Beyond the first stage the decision to press the matter is the union's. The employee's wishes are an important factor because the union does have to command majority support if it is to retain certification, and its officers are subject to election. The point remains, however, that the union does, and indeed must, act as a device for filtering unworthy grievances before they move to a stage of the grievance procedure where it would be wasteful of time and resources to consider them. On the other hand, where a grievance is important in principle or where an employee is reticent for some reason, the union may play an important role in furthering a grievance which might otherwise be dropped at the early stages.

The union bears the costs of furthering the grievance.

The grievance procedure does not involve any very significant costs until it reaches the final stage of the procedure which is arbitration. Under the labour relations legislation of every province the parties to a collective agreement must provide for the final and binding settlement of disputes by means other than economic confrontation.[35] In practical terms this means arbitration, usually by a tripartite ad hoc body consisting of one person nominated by the union, one by management and a chairman agreed between them or appointed by the Minister of Labour, in the event that they are unable to agree.[36] At the arbitration stage the union plays a particularly important role in both furthering and filtering grievances. The unions knows the value of retaining credibility with the chairmen of arbitration boards so most unions are astute to prevent unworthy grievances from going to arbitration. Also arbitration can be expensive. On the other hand, carrying a grievance to arbitration demands a good deal of expertise, as well as money, which the individual employee will not have. The union must know who to pick as its nominee to the arbitration board, it must be able to provide or pay competent counsel to argue before the board and it must assist in marshalling the facts which may bear on the decision.

Galbraith, for one, is of the opinion that the role of the unions in the administration of collective agreements is now, and in the future will more obviously be, their most important role.[37] Whether or not this is so, or is in the interest of labour or management, there is no doubt that the

grievance and arbitration of "rights" disputes is a very important part of the collective labour relations model.

Crucial as the role of the union may be in protecting employees in both "interest" and "rights" disputes with the employers, there is no doubt that the power of the unions themselves can give rise to concern about the rights and freedoms of individual employees. No model of the collective labour relations system is complete without safeguards against majoritarian oppression within the unions. In the words of the Woods Task Force:

> The collective bargaining process may be compounding the situation by subjecting workers to a new but equally frustrating type of subordination. While improving the worker status vis-a-vis his employer, collective bargaining has trapped him in a collective set of rules and regulations which can contain him even more. Individualism can be sacrificed as easily in bilateral system of industrial government as in a unilateral one. Workers may thus come to rebel not only against their employer and their work but also against the very agent in the process which has been introduced to protect their interests.[38]

The two types of protections that may be afforded to the individual employee, neither of which is well developed in Canada, are a duty of fair representation imposed on the union and legal assurance that the union is democratically responsive. Democratic responsiveness is valuable, but may be of no assistance where a minority is being oppressed by the majority. On the other hand, the potential protection afforded by the duty of fair representation is less restricted. The duty may operate both to ensure that minority interests are adequately protected during negotiations and to ensure that

meritorious grievances are properly furthered, to arbitration if necessary. The courts or the labour relations boards may enforce the duty of fair representation. The concept of fair representation must not be carried so far that the union is precluded from making valid collective decisions just because they are injurious to individuals "if responsible collective decision making within and between union and management is not to be jeopardized".[39] To allow the individual the right and means of pursuing his own grievance where the union refuses to do so affords him the greatest protection, but also jeopardizes the collective relationship most seriously.

In the Canadian system of industrial relations the primary function of unions is to negotiate and administer collective agreements. The unions have also an important political role to play, although this is commonly thought to lie outside the area of collective labour relations. In the early days of trade unionism in England, the unions had to act politically in order to become legitimate in the eye of the law. They are now more than just legitimate. They are encouraged and their power is enhanced in Canada by labour relations legislation across the country. The membership and stability which the unions have gained under the statutory system has in turn enhanced their political power because units structured in accordance with the labour relations system have given them a wide membership base. The political activities of the unions and their members are not regarded as harmful to their collective bargaining function. It has even been established in this country that employees who

only join a union because of the union security provision in their collective bargaining agreement have no legal right to object if the union diverts part of their dues to support a particular political party. The point, for our purposes, is that even though the union movement undoubtedly gains political strength from the encouragement it is given under the statutory system of labour relations that has not been taken as a justification for placing any restriction on the unions' freedom of political action.

CHAPTER 3:

APPLICABILITY OF A REGULATORY SCHEME (ALONG THE LINES OF THE INDUSTRIAL RELATIONS MODEL) TO WELFARE RECIPIENT COLLECTIVE ACTION GROUPS

The bare essentials of the Canadian scheme of regulation over industrial relations are

> (1) The creation of a tribunal known in most jurisdictions as the Labour Relations Board to administer the statutes.
> ...[2] A definition of what constitutes unfair labour practices, their prohibition being enforceable by means of a board order of cessation and compliance, ...
> ...[3] provision for certification of a union having a majority of employees as members in good standing, as the exclusive bargaining agent for a minimum period for the employees in the unit declared by the board to be appropriate for collective bargaining;
> ...[4] creation of a duty in the employer to bargain with the certified bargaining agent.
> ...[5] specification of a minimum duration of collective agreement once it is negotiated;
> ...[6] a requirement that every collective agreement provide machinery for the settlement of disputes during its term without stoppage of work. [39a]

Before proposing a legislative scheme on the labour model which will encourage the existence and growth of welfare recipient collective action groups we must ask if the goals of Canadian welfare legislation would be promoted by a scheme with the basic components of the labour relations model; recognition, collective bargaining over "interests", and union representation in vindicating "rights".

I. Interest Bargaining for Material Well-Being

Will a regulatory scheme based on official recognition of a bargaining group and compulsory bargaining with the government help achieve the goal of ensuring material well-being for the poor? The answer appears to us to be "no". A scheme of interest bargaining by recipient groups with a real and useful bargaining relationship with the welfare administration is not feasible. Moreover, as a matter of institutional arrangement, the material well-being of the poor is a political issue and must be settled in a forum where political responsibility is most directly felt. It must be borne in mind that in rejecting interest bargaining we are not rejecting collective action by recipients, which we think should be encouraged by legislation as a means of vindicating "rights" and which we regard as politically desireable.

There are two reasons why we do not think it feasible to establish a legislative system within which organized welfare recipients would bargain with the various levels of government to establish welfare rights. In the first place, welfare recipients have absolutely no withholding power. The power to

strike is the motive force of collective bargaining in labour relations and a union is only as powerful as its ability to cause economic harm to the employer by withdrawing labour. In economic terms the government is not harmed at all by a refusal on the part of welfare recipients to participate in the system. They have "negative clout". The importance of this point should not be measured by the brevity with which it is made here. It is the primary reason why collective bargaining is not feasible for welfare recipients.

It may be argued that compulsory arbitration meets this objection to establishing a balanced bargaining relationship. For example, under the Canadian Public Service Staff Relations Act[40] employee groups may opt for the right to strike or they may choose compulsory arbitration of wage disputes[41] and most employee groups under the Act have chosen compulsory arbitration. They realized that, in the short run at least, their services were quite dispensable and therefore that they had no withholding power. In this they appear somewhat more like welfare recipient groups than do the parties to normal collective bargaining.[41a]

For our purposes the important fact is that in compulsory arbitration situations in labour relations the parties are an employer and his employees. In that respect there is conformity to the general model of collective bargaining. The question that the arbitration board must decide is, essentially, "how much are these employees to be paid". The answer to that question cannot be wrought out of thin air. The decision-maker must seek his standard somewhere, and generally speaking the standard adopted is the rate of pay of people similarly employed

in the same or related industries.[42] Obviously, then, compulsory wage arbitration depends for its viability on the fact that the general wage level in the economy is set by means other than compulsory arbitration, that is, by free collective bargaining.

Where compulsory arbitration of wages is widespread or is the only means of settling the wage bargain it becomes just another name for government wage setting. In Australia, for example, this function is performed by an arbitration commission rather than by a department of government but inevitably the commission has had to acquire a large staff of economists. It has in fact become one of the most important economic arms of the Australian government because the function it performs is at the very heart of the political and economic life of the country.[43]

In the area of establishing the level of material well-being for recipients there is no standard by which an ad hoc or independent arbitrator could set welfare payments. In our opinion there is nothing to be gained by establishing an "independent" arbitral body to perform what is properly the function of a democratically elected government. It is for the government to establish welfare payments at a level which bears a proper relationship to other financial demands made on it.

The second reason why it is not feasible to give welfare groups power to bargain for rights is that such bargaining must be a majoritarian enterprise. By certification the government confers power on a bargaining representative to bargain for the benefits and rights of all the members of that group.

For reasons that we set out more fully later, we think it is unrealistic to establish a scheme for recognizing or certifying a collective action group under which that group must demonstrate that it represents majority of welfare recipients within a specified area. But a "representative" with the support of only a minority of recipients in an area or unit could hardly be allowed to make an agreement which would bind all the members of the unit.[44]

These objections to collective bargaining for recipient groups disclose a concern with something more than that it will not work; a sense that bargaining of this kind is contrary to the concepts which underlie our form of government. Collective bargaining is not appropriate for the determination of the proper level of welfare payments because that determination is manifestly a political decision. When a private enterprise is seeking to strike a wage bargain with its employees, both take the economic situation as they find it, and the bargain is struck against that background with neither taking responsibility in any way for the creation and control of the economic situation. Where the government is a party to the bargaining it wears two hats. It pretends to bargain one to one with its employees but at the same time it is politically responsible to the whole electorate.[45] The welfare recipients want and may well need more money, but so too do farmers, industries in depressed areas, scientific enterprises and students, for example, Whether or not it gives the appearance of collective bargaining, ultimately the government must make the judgment whether avail-

able money is to be spent on highways or welfare, and whether more money is to be extracted from the population through taxation. Obviously welfare recipients must make their case and they must be encouraged and able to make it strongly, but it is a political case, to be made ultimately through the electoral process.

Hopefully the legislature will act with increased awareness of the needs of the welfare population, and political strengthened welfare groups will help to achieve this.

II Collective Action in the Vindication of Rights: Protection from Arbitrary Action

The second goal which Canadian social welfare legislation seeks to meet is freedom from arbitrary action, and here we are of the opinion that a regulated scheme of collective action based on the labour relations model would be of assistance. The components of the labour relations model apposite to the achievement of this goal are official recognition (or certification) and the representation of individual recipients in the vindication of their rights.

We favour a legislative system promoting collective group action in the area of welfare administration because of the nature of welfare administration. Administrative decisions about eligibility for assistance and the amount of benefits to be received are made through the expert exercise of discretionary power. Discretion always enters in the determination of whether the facts of an applicant's or recipient's case meet established standards, and as well, the enabling legislation sometimes grants power to the administrator to decide whether, in his

opinion, the applicant's or recipient's case is one that deserves consideration. Furthermore, discretionary power may be abused, and is quite readilyabused in welfare situations because the recipients dependency may give both parties a sense of administrator omnipotence.

The existence of power in administrators to determine eligibility and the size of grants for people who are in a dependent position makes it imperative that there is real scope for appealling against those administrative decisions. Recipients must be able to correct administrative error, and administrators must be checked in the exercise of discretion by the knowledge that abuse or even the harsh use of power will not go unchallenged.

If welfare appeal boards are to be effective from the recipients' point of view they must be able to get support when they invoke the appeal procedure. An appeal board is an intimidating bureaucracy even though its procedure may be as conducive as possible to informality, friendliness, and accessibility. A recipient, or any citizen, is not inclined to make the effort of discovering the procedure for getting before the tribunal or to undergo the trauma of appearing before it and making a case which involves intimate personal details, and upon which his livelihood may well depend. Experience seems to show that,even if he is willing, a recipient cannot make an effective case before a welfare appeal board unless he knows his rights under the legislation, and has the verbal and logical skills required to present his arguments in a comprehensible way. In any group of welfare recipients there are, of course, many who lack these skills and knowledge. A system for reviewing the

decisions of welfare administrators is almost meaningless without support[46] for appellants.

The question is whether recognized welfare recipient groups or organizations can best perform the necessary support role. There are a variety of individuals and groups who are capable of giving individuals and groups who are capable of giving the necessary support. In Ontario, for instance, legal aid may be available. However, whether a recipient knows of or feels he can seek help from any of the persons or groups who can give him support in his challenge to the administrator is a matter of fortuity. The result is that the system of appeals provides some relief for some recipients and no relief for others, depending upon who a recipient has been able to acquire as a friend or acquaintance, what his general knowledge level is and how much confidence he has in himself.

Because of the nature of a collective welfare group, a recipient who has suffered an adverse decision, is more likely to seek assistance from such a group than he is to approach any other support. As a theoretical matter, all recipients can feel comfortable in approaching a recipient group for help because it is a group of their peers. In practice a welfare group might be so cliquish that any recipient who is not an insider will not approach it, but the chances are the group will wish to help because that is the reason for its existence. Moreover, recipient groups will probably be better known in the recipient community than other supports are.

Certification of established recipient groups is important because once there is official recognition of a recipient group as a support group there can be official publication of the availability of the group to act as support for or represent the individual recipient. In the proposed scheme we suggest a number of benefits that a group will gain from certification. These include making available recruiting tables in welfare offices, mailing of organization literature to all recipients in a group, limited funding for the group and notification of the existence of all certified groups to every applicant or recipient at the time any administrative decision is made in his or her case. These incidents of certification are of benefit to the certified organization, but more importantly they are of benefit to applicants and recipients. Thus, official recognition of groups and the concomitant benefits will create an environment which would increase the possibility of every recipient getting the maximum benefit from the system of welfare appeals.

In addition, the benefits of certification would tend to lead to stronger organizations. The organizations would have a specific task which would quickly generate observable results and these features would provide an impetus for growth and internal strength.

The most important advantage to flow from a certification process is that it provides a systematic method of ensuring that applicants or recipients are advised of recipient groups who can help them. Otherwise support groups are brought to the

attention of recipients and applicants for welfare on an arbitrary and paternalistic basis. A welfare administrator may well decline to mention that a support organization is available or may steer the recipient to an organization which has a history of sympathy to welfare administrators. Even where the administrator tries to act in the best interests of the recipient his vantage point may be so different that he misdirects the recipient. In any case, the recipient may be unwilling to trust a group selected by an administrator who has just rendered an adverse decision.

It cannot be denied that there are costs to official recognition. Certification necessarily involves official scrutiny of the group and scrutiny involves the application of standards. There are two dangers in this. First, the body that certifies organizations may be unsympathetic to the aims of radical or politically hostile collective recipient action groups. Second, even if the certifying body is completely neutral, or made up with a proper representation of competing interests, the standards by which applicant groups are to be judged might be framed so as to exclude all welfare groups other than those which demonstrate loyalty to decisions of administrators. If either element is present in the system of government regulation, then the whole rationale for the system of appealling from administrative decisions is lost. Neither element need be present. Any proposed regulatory scheme must simply be devoid (and be seen to be devoid) of the possibility of bias either in the certifying board or in the standards which the board is to apply in certifying applicant groups.

III. Collective Action and Psychological Well-Being

The ready availability of effective support groups is necessary to make the appeal procedure effective, and an effective appeal procedure is the best protection against arbitrary action. The last goal to be considered in determining the applicability of the industrial relations model to welfare groups is recipient psychological well-being. We consider it very important to stress at the outset that no change in the system of regulating welfare groups can be justified in terms of psychological benefits alone. If the results of our scheme include an increase in recipient self-respect, the creation of a sense of belonging and self-sufficiency in personal relationships then that will be a positive factor in considering the merits of the scheme but these are not primary goals. They come as by-products in establishing a scheme of official recognition that is not an exercise in paternalism. We believe that if recipient groups are established with a definite role to play in the administration of welfare, and the role is one that provides immediate and real results, this will enhance recipient self-regard, for it develops in recipients the knowledge and skills required to achieve their full rights under the system. It is clearly undesirable that a significant proportion of the population lives in a dependent state. Avenues must be opened through which recipients can acquire some effective control over the affairs that affect them so closely.

The psychological benefits that we foresee are not only those that come from forming into a group with a tangible goal

and from experiencing some success in meeting that goal. The protection to be afforded by the proposed regulatory system is protection from those very abuses in decision making that rob recipients of self-respect. The organizations' formal function is to provide strength to recipient challenges to arbitrary, inconsistent, fathomless and bewildering administrative decisions. The social worker may, at worst, play an authoritarian role and, at best, a role which is somewhat paternalistic. Both roles give rise to undesirable dependency. Both roles are significantly undermined when there is a system allowing strong challenges to the decisions of administrators.

Finally, recipient participation in setting up and administering the system of welfare will engender self-respect, identity and purpose at least in those recipients most actively involved. Such democratic involvement is, in our political system, desirable in and of itself.

There are two further points. Simply belonging to a group of like-situated and like-minded persons would appear to be psychologically beneficial. In this we should not be thought of as asserting that such organizational benefits are peculiar to welfare recipients alone. It is an observable fact that men (and women) have a very strong tendency to form into groups and that they seek to join groups which will confirm the rightness of the values which they hold. Welfare recipients are in this respect, in a peculiarly deprived state. They, more than any other class of society, are without suitable groups to join. Even such groups as churches which do not exclude poor persons

by dues requirements, social connections and the like may present an image intimidating to a welfare recipient. Organizations encouraged by our proposed regulated system of collective welfare administration may be valuable in filling the need to belong, which may be particularly acute in welfare recipients.

Second, it ought to be recognized that if certified groups were largely to fail in their challenges to administrators' decisions and thus decline and collapse, the whole experience might simply confirm the recipients' view of themselves as people who have failed in their relationship with social institutions.

> ... When such incidents are multiplied thousands of times in the interactions of husbands and wives, parents and their children, friends and neighbours, and when this kind of individual fault-finding comes to dominate the contacts that lower class people have with the functionaries on whom they depend in social agencies, educational institutions, housing authorities, and the like, an institutionalized system exists in which lower class people are constantly subjected to "moral damage" in their interactions with others. By their very peers and even more by their "superiors", they are deprived of a right which even the most uncivilized and primitive people that anthropologists have studied routinely accord their members, that is, the right to consider oneself and to be considered by others a worthwhile and valid representative of the human race.
>
> ... The potential for an attack on one's moral worth is ever present for lower class people.[47]

CHAPTER 4:

A SUGGESTED SYSTEM FOR THE REGULATION OF WELFARE RIGHTS GROUPS (BASED ON THE INDUSTRIAL RELATIONS MODEL).

I. CERTIFICATION OF WELFARE GROUPS.

In the evolution of modern labour relations legislation certification has given rise to problems of determining the "appropriate bargaining unit", deciding what degree of support a union must have to be certified and setting up an appropriate administrative tribunal to deal with certification. Each of these may be examined in the welfare context. In the labour relations model the certification process involves two questions: what is the appropriate unit and which union represents a majority of the employees? How are these questions to be answered in the welfare context and who is to answer them?

a) The "appropriate" unit:

The essential consideration in defining a bargaining unit is to include within it people with interests in common. If the unit includes a minority group with quite divergent interests that group may find itself unrepresented in collective relations with the employer or the government as the case may be. The predominant common interest of welfare receipients is in getting more money. They also share an interest in the vindication of rights under the system, and in avoiding degrading personal relationships by encouraging a proper attitude in welfare administration.

In our opinion recipient interests would be best served by specifying as the "appropriate" unit of recipients for collective action the group of recipients which is served by each local office. Particularly in municipal welfare,

administration may vary considerably from one locality to another so the challenges to be made by groups will vary from office to office. Depending on the nature of the local office administration the certified groups may decide to be more or less cooperative, more or less concerned to confront the administration. By the same token, for one office a relatively radical recipient organization might have considerable appeal and gain representation rights but not for another.

The main concern of the certified representative groups will be with arbitrary exercise and abuse of discretion, which is by nature individual and will vary widely between local offices. Since the focus of collective action will be local, certification should also be on a local basis.

It is probably the case that units centered around a local office can be most easily organized. Both during organization and afterwards it is, of course, important that activist recipients be able easily to contact one another, and potential members as well, by telephone and for meetings.

Where, as in Ontario, there is a distinction between provincial and municipal welfare, in our opinion the two groups of recipients should be separated into separate units defined by the local office which serves them. Recipients of Family Benefit payments are administered directly by the Provincial Department of Social and Family Services, but there is a local Departmental Office with some limited responsibility for welfare and the jurisdiction of that office will serve as a basis for defining the appropriate unit. The concerns of recipients of

benefits paid under the Family Benfits Act tend to be quite different from the concerns of recipients receiving benefits from the municipal welfare office and there tends to be a different type of recipient under The Family Benefits Act than under the municipal welfare scheme. The vast majority of recipients under the former scheme are spouseless women, with or without children or disabled persons. Most recipients have very little prospect of becoming economically self-sufficient. Municipal recipients, however, are usually theoretically capable of economic self-sufficiency. Their plight is deemed to be a short range one due to lack of employment opportunities or temporary disability. Whether or not these distinctions justify separate bargaining units, the fact remains that the two groups of recipients are involved with different welfare offices and therefore face different problems. In our opinion the two types of recipients ought to be in different units.

It should be made clear that any one welfare rights organization would be perfectly free to draw its membership from and to be certified as representative for a large number of appropriate units. In most cases, again using Ontario as an example, one organization would probably be certified to represent Family Benefits recipients and municipal or General Welfare Assistance recipients in the same area. The point of our recommendation with regard to the creation of separate "appropriate" units, for the two groups, is, for example, that if the Family Benefits recipients, as a group, found themselves

in disagreement with the policies of the General Welfare Assistance recipients, who made up the majority of and therefore controlled the policies of the certified welfare rights organization, the Family Benefits group would be able to have the organization decertified for their unit.

b) The requisite degree of "support"

In Canadian labour legislation certification of a trade union is granted if the applicant union can poll fifty percent of the votes cast in a free election conducted among all the members of the "appropriate" bargaining unit. The concomitant of the standard of fifty percent is, of course, that once a trade union is certified on the basis of majority support, it becomes the exclusive agent to bargain on behalf of the employees in the unit with the employer.

For the reasons set out below under the heading, ORGANIZATION, we think it is highly unrealistic to expect that anything like fifty percent of the welfare recipients in an appropriate unit could be persuaded to become members of a welfare rights organization orther representative group. We also consider it to be undesirable to introduce the notion of exclusivity into the certifying process. We think it preferable that there be more than one available welfare recipient groups certified as being available to support or represent any recipient who wishes to challenge an administrator's decision.

The problem is to decide what percentage of support ought to be necessary before the certifying body officially

recognizes an applicant group as a certified group. There are two factors that should be kept in mind. The first is that the ultimate number of certified groups ought not exceed four or, at the most, five because it would be cumbersome, to the point of rendering the system ineffective, if there were to be more than a very few groups. Further, if there were a large number of certified groups, recipients, on being informed of the organized support being available to them would become bewildered. They would not have a chance to learn of the policies and methods of the competing groups and their choice would be based on an uninformed guess. The results for any recipient would be as fortuitous as it is when they must rely on their own social contacts to elicit support in making challenges.

The second factor is that it seems to us to be desirable that there be a choice of certified groups. If there were no choice the recipient would, if he wanted support from an officially recognized group, be forced to accept the one group which had been certified. This would be an unfortunate result if the certified group was, for example, a puppet group established with the blessing of the welfare administration or was an extremely militant group whose goals and tactics were antithetical to those of the recipient seeking support. Our concern about the establishment of a puppet rights organization in which recipients would maintain membership by rote does not spring from a fear of bad faith on the part of administrators but

rather from a recognition of the close and dependent relationship between case workers and recipients which may well produce such a result even where the welfare workers did not intend it.

A set of standards which would accomodate these factors would be the following:

1) The first and second recipient groups able to prove membership from 5% or more of the recipient families in the appropriate unit or 25 members, would be certified. There could be no more than one member per family for computing purposes. It seems to us to be desirable that the barriers to creating a new group should not be high because any group of recipients that finds unacceptable the goals and methods of an already certified group should be able to form a competing group. Of course some degree of viability must be demonstrated at the time of certification. The rapid rise and fall of a succession of recipient groups would endanger the whole scheme. The middle course between the two aims of having a low organizational barrier and having creditable strength at the time of certification seems to be to require a minimum membership support of five percent or 25 members, whichever is the lower figure.

2) A third recipient group would be certified if it could prove greater support than either of the two groups already certified. Upon the third group's certification, the weaker of the original certified groups would be

de-certified.

3) In order to avoid the constant changing of certified groups a third group could not be certified until 6 months after the second of the two certified groups had received its certification.

4) Decertification does not necessorily follow from certification of a third group. Any group which is able to prove support of 10% or more of the recipient families can retain its certification. This means that there could be three or more certified groups so long as all of them enjoyed support from 10% or more of the recipient families. Theoretically, on this basis, there could be up to ten certified groups, but we think that involvement of a majority of recipients is unlikely and that, except for the small active minority, most recipients will tend to ally themselves with a group with an already considerable degree of support.

5) The certifying board will be responsible to evaluate the accuracy of the membership claims by any recipient organizations seeking certification. It would need a clerical staff which in our opinion would not have to be highly skilled. The main function of the staff would be to check signatures on membership application forms, to ensure that lethargic recipients had not simply joined any group that approached them in order

to "get rid of" the organizers.

Looking to experience in the labour relations system, it seems to us that an appropriate way of establishing membership and of determining that a recipient is sufficiently interested in a group to be truly called a member, should be to require that each pay a $1.00 membership fee. Membership could then be proven by the introduction of a signed application for membership and a receipt for payment from the organizer. Clerical checks could be carried out by telephone, or if necessary, by home visits to ensure that memberships were genuine.

c) The Certifying Body

Implicit in the proposal described is the existence of some administrative body which would be charged with the task of scrutinizing recipient groups seeking certification. The scrutiny would be based on a small number of very specific standards which have been identified and would involve evaluating the authenticity of membership claims in the manner described. We propose a permanent tripartite board to be responsible for carrying out these and related functions.

Each provincial government should appoint a tripartite tribunal, one member at the suggestion of the welfare department, one member after consultation with existing recipient groups and one member as acceptable as possible to both. Since the permanent impartial tribunal must be established before any recipient groups may be certified the initial consultation with

groups in order to find a recipient oriented member must be with those groups already in existence whose primary purpose is to promote welfare recipient interests. Because the acceptance by welfare rights groups of the usefulness of this scheme is essential to its success and because there is likely to be a spectrum of militancy in the already existing groups it would seem to be desirable, if possible, that the appointment meet with the approval of the strongest and most militant welfare rights groups operating in a province. The impartial chairman should be appointed by the provincial government from a list of suitable chairmen agreed upon by the department's representative and the recipient groups' representative.

The tribunal should exercise a function analagous to that of the provincial labour relations board. As is indicated in the next section, this function would include vindicating the rights of recipients who felt they were discriminated against by administrators because of their organizational efforts.

II PROBLEMS OF ORGANIZATION: PROTECTING THE ORGANIZERS AND A PROPOSAL FOR FINANCIAL ASSISTANCE

We are concerned with a system of regulation which will promote the growth of recipient groups to act as supporters of recipients in appealing from and otherwise challenging individual administrative decisions. However, it shall be stressed that it is not expected that the groups certified under the scheme will confine their activities to this narrow function. The organizations that seek certification may already be active politically and, hopefully, they will be encouraged to grow and develop in all capacities by the proposed scheme, although it will directly facilitate their performance only in assisting challenges in individual cases. The scheme proposed here is not designed to pre-empt the functions already being performed by groups. Political activities are of the utmost importance, because they bring increased recognition to what is now a grossly under-represented segment of the population.

a) Problems of organization

Organization among welfare recipients is a very new phenonomen. Over the past five years the National Welfare Rights Organization in the United States has flourished. Its local branches and similar organizations have grown rapidly, with considerable publicity. In the past two or three years similar groups have come into existence in many of the larger centres in Canada,[48] although there is as yet no national or provincial organization of welfare recipients. There is,

apparently, very little liason between groups within a province or even within a city.[49] Canadian welfare rights groups are small, financially insecure and very much dependent in almost every case on the driving force of a few individuals at the core of the group. These weaknesses do not make them unworthwhile or very different from many other organizations. In labour unions, for instance, there is a great deal of general apathy and, there too, much of the work and enthusiasm emanates from a small core group.

It does however, appear to us that because of the general acceptances of labour unions, and because they have the support of large working bureaucracies union locals are seldom in the same danger of total collapse that faces a welfare group should most active people in it cease, for some reason, to be active. Welfare recipient organizations are often very personal organizations.

While welfare recipients as a group have considerably below average education,[50] Mario Carota's findings indicate that the core group of activists in any welfare organization are apt to be middle class in their background, with considerable educational resources to draw on and well able to understand the intricacies of the welfare system.[51]

It may be that Carota's findings simply indicate that where welfare organizations have been established it is because the core of the organization consists of reasonably well educated people of middle class background who, largely through broken marriages, have fallen into a welfare situation. Our experience is that in a community where there are very few or no such

people on the welfare rolls spontaneous organization is unlikely, and difficult even when it is sparked from the outside. Organizational and legal know-how is necessary if organization is to take place and if the group is to be maintained.

The successful implementation of the proposed scheme to encourage organizations to challenge individual decisions depends on the growth of strong organizations. It is our contention that the function provided by the implementation of the scheme is itself a strengthening and organizing force. Given the goal of certification and a recognized role more groups should come into being, and those in existence now should grow. However, as a minimum, there are two other incentives which ought to be provided: protection from discrimination by administrators against organizers, and financial assistance to organizations participating in supporting recipient challenges to administrative action. These incentives can be made part of a system of regulated collective action in welfare administration.

b) Protecting the organizers

The right to join a welfare action group must be protected in the same way that the right to join a trade union is protected.[52] The function proposed for welfare groups in the administration of welfare rights and as well as their general political function makes a welfare organizer unpopular with local and provincial administrators but no recipient should suffer in any way at the hands of the welfare administration

because he is a member or a leader of such a welfare rights group. Special attention should be paid, as is the case with unfair labour practices, to the motive behind any action taken against a welfare activist. There would be a considerable onus on the administration to justify any irregularities. Termination or delays in welfare payments would have to be justified, and, clearly, even patently unlawful activities could not be taken to diminish welfare rights. The welfare tribunal should hear complaints about, for example, the way in which local police forces administer the general law in its application to welfare rights activists, about the manner in which welfare administrators exercise their discretion where welfare activists are involved and about the kind of scrutiny to which such people are subjected. Of course, protection would only extend to the complainant's right to welfare and freedom from official interference with lawful activities. The leader of a destructive demonstration could expect no immunity.

There is evidence[53] that welfare recipients are often fearful about doing anything which may offend the welfare administrators. This fear must be off-set if recipients are to play an effective role in the administration of the system and if they are to be effective politically. The permanent tripartite tribunal should be available to recipients to hear complaints that they have "received special attention" because of their activities in welfare rights groups. Paranoid complaints would undoubtedly be a possibility but a properly selected tribunal should be able to sift them out. As in the labour relations model, the same tribunal established to

certify welfare groups could handle complaints of discrimination.

The use of this tribunal to deal with complaints of discrimination clearly serves the goals of avoiding degrading personal relationships in the welfare area and of lending certainty and thus enhancing the nature of welfare payments as a "right". Official protection of the right of welfare recipients to criticize the welfare system and to challenge the administration of benefits would give them a view of themselves as independent citizens free from anxiety about being punished for participating in society in a way which is thought to be normal for all citizens. The state of financial dependency would not give rise to a limitation upon their rights to act as a free citizen. Perhaps most important, protection of welfare recipients' right to organize might lead to greater political activity on the part of recipients individually and in groups, which ultimately would serve the goal of greater equity in the distribution of society's resources.

There is, of course, considerable cost in establishing and operating a tribunal competent to face the difficult task of dealing with the kind of complaint envisaged here.

c) Financial assistance for welfare groups

Trade unions are not financially supported either by the government or by employers and employers' associations. The vast amount of money needed to carry out trade union functions is derived from dues. In many plants all the workers in a particular bargaining unit pay the fee to the trade union which represents that unit whether or not they are members. This is undoubtedly a healthy state of affairs for the unions because they are not dependent on anything except their ability to continue to win the confidence of that part of the work force which they represent. Neither government nor management is able to bring pressure to bear on unions. The suggestion that the position of welfare groups should be any different raises serious concerns.

Despite the pitfalls we recommend that the scheme for encouraging collective action in welfare administration include provision for government funding of certified welfare groups. The costs are obvious. The groups under such a scheme assume the risk of losing their financial support by engaging in activities which become politically embarrassing. However, if the funds were to be provided for in accordance with fixed criteria then the discretion in granting funds could be removed, and if the system for funding were enacted in legislation rather than rules or regulations there could be no stoppage of funds or reduction in the amount except by statutory repeal. This is the maximum possible degree of entrenchment, and

legislation designed to cripple the political and other activities of welfare recipients would be a large enough political target that governments would not succumb easily to the temptation to remove the funding provision from the law once enacted.

The need for legislative funding provisions is as easy to identify as the dangers. Recipients are simply not capable of contributing a substantial sum to any organization. It is unrealistic to expect that recipients, who usually live at subsistence level, will sacrifice either their basic needs or their few luxuries to support organizations which in most cases will not be providing immediate tangible results.

It is also not realistic to expect welfare groups to be run without funds. The success of the groups depends on skills and talents in organizing which at the outset, at least, recipients will need training in. In the initial stages the help of professional organizers will be required. In recruiting members and in servicing their members' needs, new groups and certified groups will need an office, a telephone, an answering service and personnel. The first three items will require funds. Even if the personnel consists of unpaid recipients money should be available to pay transportation costs and baby sitting expenses.

It is not realistic to expect welfare groups to find financial support through solicitation of funds from private persons and agencies. A system of funding based on such

uncertain sources as these leads to a spasmodic operation, rather than a constant series of challenges to welfare administration, so that the questioning of decisions which adversely affect recipients becomes a matter of normal routine. It is only when the appeal procedure operates as part of the regular administration of welfare benefits that freedom from arbitrary action becomes a realizable goal.

The mechanism which we suggest for the provision of funds to recipient groups is simply that on certification the permanent tripartite tribunal will also certify the actual number of recipients who have been shown by the applicant group to be members. The provincial department in charge of welfare services will then make payment to the group of one dollar for each member on the date of certification and on each monthly anniversary date of certification. In other words welfare groups will receive a monthly grant of one dollar per member. On the six-monthly anniversary date of its certification each recipient group must demonstrate to the board the state of its membership. The grant will be decreased or increased for a further six month period in accordance with established membership.

At the application before the permanent board for an increase or decrease of funds continued membership will be proved by a card signed by each member in the month preceding the application stating that the signatory is still and wishes to be considered a member of the applicant group.

A member will not be expected to pay any dues or fees other than the original dollar paid at the time he first became a member. The staff of the permanent board will have a two-fold policing function in connection with funding. First, the staff will have to ensure that no recipient belongs to a multiplicity of welfare groups and second, it will have to check that the signed-up members actually agree to be considered as members within the month preceding the application. This function could be performed by the use of spot telephone checks.

A further point to be made under the funding provisions is that neither the permanent board nor the government should concern itself with how the money is being spent. It may be that some organizers will be fraudulent and apply the funds to their own purposes. It may be that some groups will decide to apply any surplus funds, after meeting expenses, to the direct benefit of welfare recipients. As to the latter possibility, it is the function of certified groups to provide some benefits to their members such as day care centres or advisory bureaus as well as support in bringing appeals, and in fact they ought to do so, in order to retain membership. However, if the group prefers to provide more direct monetary benefits then the recipients should be allowed to decide whether they prefer the direct payments to effective group services. If payments to recipients ultimately lead to a weak,ineffective organization then the group will lose its membership and its certification.

Fraudulent spending of supporting funds is more serious, but to some extent, the same principle prevails.

Recipients must decide for themselves whether the organization to which they belong has provided them with the degree of support and services which they see other groups either in the same community or in other communities enjoying. If fraud is robbing them of benefits they can invoke the general law, or simply quit the group.

Leaving it to recipients to determine whether their organization is a worthwhile one may not always result in the most worthy organization attracting the most support or even being certified, but the only alternative is to set up an administrative body to scrutinize the financial practices of the welfare groups. Such scrutiny might all too easily become a form of censorship which would inhibit the functioning of the organizations. Audits by government auditors of the books of organizations looking only for outright fraud would give less rise to any form of censorship. However, the auditing process would result in the mandatory practice of strict bookkeeping on the part of the organizations. The demands of bookkeeping might in themselves prove an obstacle to the growth of grass-roots welfare organizations. Since it is precisely these organizations which are likely to serve best the interests of their members anything which seriously inhibits their growth should be rejected.

Finally, it is important to the continued achievement of the primary goal of the regulated system that government interest in the scheme should not be overly institutionalized. If there were to be an official audit of the recipient groups'

spending this might well lead to the imposition of government established standards. The cost of this would be a loss of group initiative, innovation and experimentation. This seems to us to be a serious impairment to the desirable operation of the regulated scheme.

III THE NATURE OF COLLECTIVE ACTION IN THE ADMINISTRATION OF THE WELFARE SYSTEM

(a) Grievance Procedures

Considerable good could come from the introduction of collective activity on the labour relations model into the administration of welfare, but the idea of collective "interest" bargaining has been rejected. Hence the parties, that is the welfare administration and recipient groups, would not have a "collective bargaining agreement". They would be administering a statute and regulations passed under it, but this difference presents little conceptual difficulty, since a collective agreement may well be characterized as a private statute. It may well also be that organized welfare recipients, as a political force, will have played a considerable part in determining the contents of the welfare legislation which they participate in administering on a collective unit basis.

We propose a grievance procedure in welfare administration similar to that commonly found in collective labour agreements. At the first stage the welfare recipient would complain in person directly to the administrator or a case worker with whom he was in disagreement. The personal resolution of problems seems to be desirable, particularly in those situations where skilled social case work is necessary to rehabilitation. However, a complaint in person should not be an absolute prerequisite to proceeding to higher stages of the grievance procedure. At least the recipient should not be required personally and without support to confront the official with

whom he is in disagreement. In cases where a clear right under the legislation is being denied or where the recipient feels very strongly that because of his inferior position unsupported confrontation is not something he can handle then the first complaint should be made with the support of someone from or appointed by a recipients' organization.

In determining whether or not to support a recipient who wishes to make a complaint the recipients' organization would play the same filtering role that trade unions do in the grievance procedure. For example, the responsible officer of the organization would have to decide whether a recipient should be encouraged to make the first complaint personally and without support. Thereafter, the officer would have to decide whether the complaints seemed valid enough or important enough to justify assigning an articulate and informed member of the group, or some outside counsel, to assist the grievor. As is the case with trade unions, there would be political pressure on the officer, encouraging him to make sound judgments. If he refused to assist in the furthering of legitimate grievances in very many cases, the recipients affected, and others as well, would withdraw their support from his group and perhaps even organize and seek certification for an alternative recipients' organization. Short of that the officer himself might lose his elective office in a recipients' organization.

Internal pressures could conceivably lead to frivolous grievances being taken to arbitration. Hopefully,

however, the responsible officers of the recipient organizations would realize that frivolous cases and farfetched arguments would destroy the group's credibility in the arbitration process and, thus, endanger its long term effectiveness. Furthermore, the sheer work involved in preparing for and presenting an arbitration will be sufficient to discourage recipient organizations from carrying to arbitration grievances which have no possible chance of success.

Certification of a recipient's group would not entitle it exclusively to provide assistance and counsel in the pursuing of grievances. Rather, the effect of certification would be that the welfare administration would be required to advise any recipients subjected to an adverse decision of the names, addresses and phone numbers of recipient organizations certified as representatives for the bargaining unit. We propose that wherever a recipient is advised of a decision adverse to his interests he be advised that there is a grievance procedure open to him, that he has a right to assistance or counsel in pursuing grievances and that the named recipients' organizations are willing to assist him. Where there is more than one organization the one with the largest membership would be named first, but no other distinction would be made between them.

The function of the certified recipient organizations would be both to filter out groundless grievances and to further, indeed to seek out and initiate, valid grievances, especially those that raise questions of general principle.

Among the leaders of welfare groups are people who understand the welfare system and can articulate rights under it very effectively. With the assistance of such people, or with the assistance of counsel paid by the welfare organization, recipients can effectively insist on prompt fulfilment of their rights under welfare legislation. Errors and oversights can be discovered and improper exercises of discretion eliminated.

In seeking out valid grievances the organization would be furthering general awareness among recipients of the nature of their rights under the legislation.

We propose that the municipal welfare administrator or the provincial official in charge of each office around which a welfare bargaining unit is centred be empowered to establish the stages of the grievance procedure applicable in his office. In no case should there be more than three stages in the grievance procedure prior to arbitration. Written forms for proceeding from the first to second or subsequent stages of grievance proceeding should be prescribed, and they should be simple and clear. In every case the grievance procedure must be able to be invoked initially by oral complaint. Recipients should never be in the position of being unable to initiate proceedings because they cannot fill out a form or because of the embarrassment which they may feel at being able to do so only very badly.

Where the recipient and his representative are unable to effect a satisfactory resolution of his grievance with the welfare administrator in the course of the grievance procedure,

we propose that he be enabled to take the matter to arbitration and that the procedure be quite similar to arbitration under a collective labour agreement. In our proposed scheme a grievor who wished to proceed to arbitration would normally have to have the support of a certified bargaining representative. We deal below with the situation where the recipient is not supported either because he has no desire to associate with a recipient group or because no recipient group will accept his case, or because in his area there has not been a recipient group certified to act by the permanent board.

We propose a tripartite arbitration tribunal, with one member appointed by the certified organization, one appointed by the local welfare administration and the chairman agreed upon by them, or failing agreement, appointed by the attorney-general of the province. The chairman would be paid by the government at a fee somewhat less than that normally paid to labour arbitrators and the government should also pay the party appointees a small honorarium and any expenses involved.

The role of arbitration board members appointed by the parties in interest has been subjected to some criticism in the labour relations context, mainly on the grounds that the appointees tend to act as a second line of counsel while adding delay and expense to the proceedings. The argument in favour of tripartitism is that the appointees bring practical understanding to the proceedings and encourage confidence in the system on the part of the parties by the sympathy which

they accord at the hearing. Tripartitism may, therefore, be very useful in welfare arbitrations where it is particularly important to avoid a feeling of insecurity and inferiority on the part of the recipients and their representatives appearing before the tribunal. Moreover, until there comes to be a body of experienced "chairmen" the parties' appointees may bring to the tribunal an indispensable sensitivity for welfare situations.

We propose that the parties' appointees to welfare arbitration tribunals not be permitted to be either government employees or employees of welfare recipient groups, nor to be themselves welfare recipients. Appointees by welfare recipient groups might well be clergymen, former recipients, union officials, or local politicians. The chairman would probably have to be someone with legal training, or at least some understanding of the rules of evidence and with a sense of relevance. Decisions of any arbitration tribunals whould be final and binding, subject only to judicial review for error of law in the face of the record and defects of jurisdiction.

We think it critical that arbitration decisions be published, with names and places removed. Otherwise the arbitration bodies will have no way of ensuring consistency. Even with a permanent appeal board, as at present in Ontario, the failure to publish decisions makes intelligent use of the appeal procedure impossible.

Proceedings before a welfare arbitration tribunal should be informal, but generally following the usual procedure of each side proving facts through witnesses under oath, if there is a dispute on the facts, followed by argument on the proper application of the welfare statute or regulations.

In our opinion welfare rights organizations would soon develop some sophistication with regard to who should be appointed to welfare arbitration tribunals, who are acceptable chairmen and what kinds of grievances should be pressed to arbitrations.

(b) The Unrepresented Recipient

As has been pointed out above, the proposed scheme does not explicitely take account of the unrepresented recipient. Nor does it take account of the refused applicant who, not being a recipient, has not the status to become a member (or at least a member whose membership results in a government grant) of a welfare group. We would deal with the latter problem by proposing that a person seeking welfare be given status to become a member of an organization as soon as he files an application for welfare assistance. If, within six months of his application he succeeds, either through his own efforts or the efforts of the group, in qualifying for benefits then the group to which he belongs will receive a grant of one dollar for every month he has been a member. On the other hand, if he, having exhausted his rights of appeal, fails to qualify as a recipient,the group will not receive government funding in respect of his membership. He can, of course, remain a member of the group if the group admits long-term non-recipients as members.

In most cases the date,on which the group qualifies to receive funding, (that is, when the applicant succeeds in qualifying for benefits) will not coincide with the date of the six-monthly tribunal review of group membership. In these cases the group would wait until the next membership review by the tribunal before applying for funding in respect of the new recipient. The increased grant once awarded would be retroactive to the date on which the recipient first applied for welfare or became a member of the group, whichever is later.

The more serious problem is the one of the unrepresented recipient. It has been mentioned that this problem will arise in three ways: when a recipient does not wish to join any welfare group; when a recipient's request for support in making a challenge is rejected by the welfare group or groups; and when there is a unit in which no welfare group has been certified.

Our solution is that in these cases the individual recipient be allowed to invoke the grievance procedure on his own behalf. He or any person or agency he is able to get to support him may carry his challenge through the grievance procedure to the point of arbitration. He, or his supporters, will be allowed to call for arbitration and name a nominee. The two nominees will name a chairman and the recipient will be responsible for seeing that his case is presented before the board of arbitration.

In these cases the function of the welfare group in filtering out unworthy grievances is largely lost. This may be an unfortunate cost. However, the alternative of leaving numbers of recipients without any redress against administrators' decisionsis totally unacceptable. It is antithetical to the underlying purpose of the scheme to enable an effective system of appeals which is available for all recipients as a matter of course. The alternative of leaving some recipients remedyless is a backward step from the situation under the Canada Assistance Plan in which all recipients are able to

invoke the Welfare Board of Review.

There is one further concern arising from the operation of the proposed system of appeals; that is, the concern about the protection of individual or minority interests when the individual is a member of a welfare group and the group has agreed to represent him in his challenge of the administrator's decision. It is conceivable that while a welfare group would be willing to handle the grievance of the recipient, it would also be willing to compromise the position of the individual recipient for purposes of making other larger and more general gains in another dispute or for political goals. To protect the individual in the administration of the collective agreement, labour relations law, particularly in the United States has ensured that democratic principles operate in the union itself, and has imposed a duty of fair representation on the union, enforceable through court action or before the labour relations board. In welfare administration concern for the minority member of a recipient group need not be so great since under our proposal he can resort to organizing a counter-group, or leaving the group of which he is a member and joining another certified welfare group which is more willing to seek satisfaction of his demands. Where the right to be certified as bargaining representative is not exclusive, certification does not have the same inherent dangers for the individual or the minority. Thus, in our opinion there ought not to be any attempt to provide legislatively for the way in which a welfare group administers

itself. The internal political affairs of such groups can be made vastly complicated by overly legalistic concerns. Moreover, legal intervention into the mechanisms of democratic control is a very indirect way of ensuring adequate representation of the interests of individuals or minorities in particular cases. The real choice, in our opinion, is between imposing a duty of fair representation on a group or, alternatively, allowing a grievor to proceed on his own to arbitrate a grievance where the recipient organization refuses to satisfy his demands. The choice between these two methods of ensuring that individual rights are vindicated was faced by the courts of the United States in the labour context,[54] and they opted for the duty of fair representation but such a duty is a very blunt instrument. In any event, unless responsibility is to be removed completely from the collective body, the duty of fair representation can be no higher than an obligation to consider an individual's claim in good faith.

IV BENEFITS TO WELFARE GROUPS FLOWING FROM CERTIFICATION

Under our proposals the principle benefit bestowed on a welfare recipients group by certification is that the welfare administrator would be obliged to give a reference to the group in advising any recipient of his right to pursue the grievance procedure. This, presumably, would help the group to perpetuate itself because recipients aided by the group, probably as a matter of course, would become members and, as well, the formal and informal publicity attendant on the grievances would attract new members. In our view the perpetuation of the certified group would be desirable because it would permit the development of an intimate knowledge of the welfare system and of skills in handling grievances. It would bring stability into the collective relationship.

On the other hand, the self-perpetuation benefits of certification should not be so great that a group once certified could count on continued status if it did not energetically seek to further the rights of welfare recipients in its constitutuency. Decertification should be, and is, a clear possibility.

To make the proposed system work a certified recipient organization must gain some advantages which help it to retain its members and attract new members but it must not be impossible to dislodge where it has become lethargic.

In addition to gaining the right to be recommended as an advisor and counsel to grieving recipients, we propose that certified recipient organizations be given the right to enjoy the use of a recruiting table, with chairs and other necessary facilities, in the ante-room to the welfare office. They

should also be entitled to the use of a conspicuous and attractive bulletin board in welfare offices. In our opinion it is inconceivable, with the 10% support requirement that there would ever be more than three groups certified for one unit. In almost every case it would be the two groups who need only 5% or 25 members. At any rate, we are satisfied that no practical problem would be presented by entitling certified groups to maintain a recruiting table in welfare office ante-rooms.

Recruiting tables would go a very long way to ensuring the organization of any municipal welfare recipients who were at all receptive to the idea. Recipients of Provincial benefits, Ontario Family Benefits recipients for example, present a different problem. They are long term recipients who receive regular cheques by mail and, in the normal course of things, once they have been enrolled, do not visit the local provincial office which has administrative responsibility for them. One way of reaching them would be through the use of the mail service. We think it offends the notion of recipient privacy for certified groups to be provided with lists of all welfare recipients. Therefore we propose that upon certification, groups be given the right to periodic mailings to all recipients in the unit, the material to be provided by the group and forwarded by the local administrative office. Because the right to free mailing arises only on certification, groups in the process of the initial organization will have some difficulty in discovering who their potential members are. There is no solution to this

problem except that provided by hard work in the form of zealous "in the community" organization. A further possible aid would be provided by asking each applicant at the time of his application if he is willing to have his name disclosed to welfare organizations. The names of all recipients indicating willingness to have their names disclosed would be provided to all organizations whether or not they were certified.

It will of course be necessary for any group or person who applies for the information to be given the total number of recipient families in the unit. Otherwise organizing groups cannot know the absolute numbers of members they must acquire in order to apply successfully for certification.

V CERTIFIED RECIPIENT ORGANIZATIONS AS POLITICAL PRESSURE GROUPS

As we have already attempted to make clear, our rejection of the notion of formalized "interest" bargaining by certified recipient groups is coupled with the suggestion that the political hand of welfare recipients be strengthened by encouraging organization and consultation. It is our opinion that the certification of welfare groups as representative of recipients in various appropriate units in each province will encourage recipient participation in governmental action. The certified groups will have a continuing administrative role to play and will have to maintain an organization for that purpose. The same organization can play an important role in pressing for changes in social welfare legislation.

Certified groups in different units will, in all probability, federate in order to strengthen their position with government. Perhaps more realistically, if the labour relations model is any indication of how the process will work, welfare rights organizations will seek certification on behalf of recipients in various appropriate units. Thus, for example, Welfare Rights Unlimited might seek certification for both general welfare assistance and family benefits recipients in all Metro Toronto units, or most of them. The consequent administrative involvement would, in our view, only serve to strengthen Welfare Rights Unlimited in its role as a pressure group. The size and scope of interests of this and similar organizations in their political aspect

will then be entirely a function of leadership and membership inclination.

In order to avoid stifling the pressure group activities of certified organizations or, conversely, to avoid discouraging existing social action groups from seeking certification, it should be made clear in any legislative scheme that such activities could not lead to decertification, even illegal activities like picketing accompanied with violence, or conspiracy. The certification process must not be made a vehicle for taming radical welfare rights movements to the system.

FOOTNOTES

1. Canadian Welfare Council, Social Policies for Canada, Part I (1969), 3.

2. See, The Senate of Canada, Proceedings of the Special Senate Committee on Poverty, No. 23, Feb. 24 and 26, 1970, Appendix "A": A brief presented by the Department of National Health and Welfare, at 62.

> "The rough measure of poverty used by the Economic Council of Canada in its Fifth Annual Review indicates that approximately four million Canadians could be considered to be living below a poverty level. Of these, available data from the Canada Assistance Plan and the Old Age Security Program suggest that close to two million currently are receiving income support based on a means or need test, or an income supplement to Old Age Security; the incomes remain nonetheless below this poverty line." (footnote omitted)

3. Ibid. at 62-63.

4. Bendich, "Privacy, Poverty and the Constitution" in J. ten Broek et al., The Law of the Poor (1966), 83.

5. Ibid. at 103.

6. For example, the problem of poverty is not a different order of social problem than the problem of providing adequate communications systems or the problem of educating all citizens to the limit of their intellectual abilities. If it becomes legislative policy to attempt to rid society of poverty, or at least to alleviate its hardships, then the extent to which, and the way in which, governmental resources will be committed to these goals becomes a matter of evaluating the proposed scheme in terms of benefits to the recipients and society generally, and in terms of priorities and costs.

7. It should be observed that if goals are expressed with any degree of particularity it is inevitable that the goals of government and those of recipients will conflict. For example, it is a goal of the legislature that welfare funds not be paid out except to those who qualify for assistance. The achievement of that goal is very likely to conflict with the goal of recipients that they not be under any more compulsion to disclose their private affairs than is the ordinary citizen. However, to admit that, at some levels of specificity, interests conflict does not preclude the possibility that there is a level of sufficient generality where the goals, and interests, and the policies of government and recipients coincide. If this level of generality can be found and the goals thus identified it becomes possible to make some evaluation of the desirability of regulating collective action.

At the very fundamental level of governmental process the goals of government and the goals of recipient groups are necessarily coincident. That is, underlying all legislative schemes is a policy in favour of keeping open the lines of political suasion. Collective action directed toward changing the welfare scheme can be characterized as an exercise of speech and petition which is recognized, at the federal level legislatively, (see, The Canadian Bill of Rights, S.C. 1960, c. 44, ss. 1(d),(e) and (f)), and at all levels by judicial pronouncement (see, e.g., Reference re Alberta Statutes, [1938] S.C.R. 100 per Duff C.J., and Switzman v. Elbling and A.-G. Quebec, [1957] S.C.R. 285, per Rand, J. at 306.

> "Whatever the deficiencies in its workings, Canadian Government is in substance the will of the majority expressed directly or indirectly through popular assemblies. This means ultimately government by the free public opinion of an open society, the effectiveness of which as events have not infrequently demonstrated, is undoubted.
>
> But public opinion, in order to meet such a responsibility, demands the condition of a virtually unobstructed access to and diffusion of ideas."

8. S.C. 1966-67, c. 45.

9. Haworth, "Deprivation and the Good City", in W. Bloomberg and H.J. Schmandt, Power Poverty and Urban Policy (1968), 27 at 41.

10. Ibid. at 42-43. Professor Haworth in turn derives his analysis from Vlastos, "Justice and Equality" in R. Brandt, [ed.], Justice (1962).

11. House of Commons Debates, (Canada) First Session, Twenty-Seventh Parliament, Volume VI, 6408 (June 14, 1966).

12. The Senate of Canada, supra n. 2.

13. Ibid. at 105.

14. Ibid.

15. The Senate of Canada, Proceedings of the Special Senate Committee on Poverty, No. 43, May 25, 1970, Appendix "A": Brief Submitted by the Ontario Department of Family and Social Services,at 49.

16. Cloward and Piven, "Politics, the Welfare System and Poverty", in L. Ferman, J. Kornbluh and A. Haber, Poverty in America (1968), 223 at 227.

17. Ibid. at 233.

18. Ibid. See, also, Cloward and Piven, "Social Justice for the Poor", in L. Ferman, J. Kornbluh and A. Haber, supra n. 16, 322 at 325.

> "The task of explicating the statutes then falls upon the welfare bureaucracies, so that the political struggle shifts from the legislature to the arenas of administration.
>
> The struggle to control the discretion of the administrator is, for the low-income person, an unequal one."

19. Handler, "Controlling Official Behaviour in Welfare Administration" (1966), 54 California Law Review 479 at 481-82 and in J. ten Broek, supra n. 4, 155 at 157-58.

20. The Senate of Canada, Proceedings of the Special Senate Committee on Poverty, No. 32, April 16, 1970, Appendix "A": Brief submitted by The Canadian Civil Liberties Association, at 31.

21. The Senate of Canada, supra n. 2 at 105 (emphasis added). The implementation of this objective at the provincial level is described in the Department's brief at 107.

> "Agreements under the Canada Assistance Plan embody an undertaking by each province to ensure the provisions by law of a procedure for appeals from decisions of provincially approved agencies with respect to applications for assistance or the granting of assistance by persons directly affected by such decisions. Each agreement also includes an undertaking by the province to provide for an adequate method by which that procedure is brought to the attention of applicants for an recipients of assistance."

22. Ibid. at 105.

23. See, Liebow, "No man can live with the terrible knowledge that he is not needed.", The New York Times Magazine (March 15, 1970) 28:

> "So closely is work tied in with the social and psychological development of man that it is almost impossible to think of what it means to be human without thinking of work. ...
>
> It is also through work, as a producer of socially useful goods or services, that the individual - especially the adult male - carries out those social roles (husband, father, family head) that define him as a full and valued member of his society.
>
> That work becomes, in effect, a kind of admission ticket to society is not something invented by White Middle-class Americans ..." (at 29).

However, often the only work that is available is counter-productive to a sense of self-respect in that it merely confirms the worker's own sense of worthlessness. Liebow states:

> "... The man who works hard may be little or no better off than the man who does not look for a job at all. In a sense he may even be worse off. The man who works hard but cannot earn a living has put himself on the scales and been found wanting.
>
> ... work alone does not guarantee full and valued participation in society. Participation requires not only an opportunity to contribute to the day-to-tday life of that society, but it requires, reciprocally, an acknowledgment by society that the contribution is of value. That acknowledgment, typically in the form of wages, lets the man know that he is somebody, that he is important, useful and even necessary." (at 130-131).

24. See, The Senate of Canada, supra n. 15 at 50.

> "The fact that hundreds of thousands of people in Canada depend on the social assistance structure for their livelihood does not condemn it as a failure. For many such as the aged, blind and children there is a limited earnings capability. If the needs of such groups are generally adequately met through social assistance then the system meets the objectives for which it was designed."

25. See, The Senate of Canada, supra n. 2 at 70-75: (b) Changing Welfare Concepts.

26. The Federal Industrial Relations and Disputes Investigation Act, S.C. 1948, c. 54; The New Brunswick Labour Relations Act, 1945, S.N.B. 1945, c. 41; The Alberta Labour Act, S.A. 1947, c. 8; The British Columbia Industrial Concilation and Arbitration Act, S.B.C. 1947, c. 44; The Nova Scotia Trade Union Act, S.N.S. 1947, c. 3; The Manitoba Labour Relations Act, S.M. 1948, c. 27; The Ontario Labour Relations Act, 1948, S.O. 1948, c. 51. Newfoundland passed similar

legislation a year after Confederation with Canada: The Labour Relations Act, S.N. 1950, No. 15. Prince Edward Island did not enact a statute in conformity with the general pattern until 1962: The Industrial Relations Act, S.P.E.I. 1962, c. 18.

27. See, e.g., The Labour Relations Act, R.S.O. 1960, c. 202, s. 75.

28. See, e.g., The Labour Relations Act, R.S.O. 1960, c. 202, s. 6(1) and (2).

29. See, e.g., The Labour Relations Act, R.S.O. c. 202, s. 12.

> "The parties shall meet within fifteen days from the giving of notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement."

30. In the United States the concept of good faith bargaining has been explored fully and there has been constructed a complex code of board and court-made law. See, Cox, "The Duty to Bargain in Good Faith",(1958), 71 Harv. L. Rev. 1401; Fleming, "The Obligation to Bargain in Good Faith",(1961), 47 Va. L. Rev. 988; Wellington, "Freedom of Contract and the Collective Bargaining Agreement", 112 U. Pa. L. Rev. 467; Davies, "The Duty to Bargain: Law in Search of Policy", (1964), 64 Colum. L. Rev. 248.

31. The Government of Canada, Canadian Industrial Relations, The Report of the Task Force on Labour Relations (1968), (known as and hereinafter cited as The Woods Task Force Report).

32. Ibid. at 21.

33. Ibid. at 117.

33a. Ibid. at 119.

34. Ibid. at 129.

35. See, e.g., The Labour Relations Act, R.S.O. 1960, c. 202, s. 34(1).

> "Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable."

36. See, e.g., The Labour Relations Act, R.S.O. 1960, c. 202, s. 34(4).

> "...if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make such appointments as are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement."

37. Galbraith, The New Industrial State (1967), at 263-4.

38. The Woods Task Force Report at 98.

39. Ibid. at 104.

39a. Carrothers, Labour Arbitration in Canada (1961), at 10-11.

40. S.C. 1967, c. 72.

41. Canadian Public Service Staff Relations Act, S.C. 1967, c. 72, ss. 2(w) and 36(1).

41a. Compulsory arbitration is also used where the services of the employees in question are so indispensible to society that a strike cannot be permitted. See, e.g., Hospital Labour Disputes Act, S.O. 1965, c. 48.

42. See, e.g., Re Building Service Employees, Local 204 and Welland County General Hospital (1966), 16 L.A.C. 1 (H.W. Arthurs, Arbitrator), at 4:

> "(2) Wage levels should be measured by external comparison with other hospitals. This standard is not unreasonable in 1965, at the very inception of the system of compulsory arbitration, because it reflects the relative bargaining strength of parties who were legally free to resort to economic warfare, and who have agreed upon wage levels by a process of normal collective bargaining ....
>
> (3) Wage levels for hospital workers should be measured by external comparisons with persons doing similar jobs in industry in the local labour market."

43. See, Foenander, Industrial Conciliation and Arbitration in Australia (1959); Labour Relations Law Casebook Group, Labour Relations Law, (1969) at 3.16-3.18.

44. Large scale ordering of private relationships in a non-voluntary way by agencies other than the government (as is the case in making of collective bargaining agreements or in the making of marketing schemes by farmer organications) is itself a detraction from the notions of democratic government. (See, Carter v. Carter Coal Co. (1936), 298 U.S. 238, 56 Sup. Ct. 855, 80 L. Ed. 1160.) It is a detraction which society has shown itself willing to accept provided that the majority of those affected by the private ordering either directly or indirectly acquiesce in the arrangements made. This proviso could not operate in the field of bargaining for welfare rights and is therefore undesirable.

45. Some government employees in Canada, for example, the postmen under the Canadian Public Service Staff Relations Act, S.C. 1967, c. 72, are given the right to strike and indulge in collective bargaining with the government. Here the government does wear two hats, and there are many who would argue that collective bargaining is not appropriate. It is an experiment worth trying,

however, because the other elements of a true collective bargaining situation are present. The union does have real withholding power and the relationship between the government and those on the other side of the bargaining table is the traditional employer-employee relationship and thus somewhat different from the government's relationship to other interest groups competing for limited government resources. The situation of government employees with the right to strike, as a matter of governmental or institutional propriety, is quite different from that of welfare recipients.

46. Gellhorn, "Poverty and Legality: The Law's Slow Awakening" (1967), 9 Wm. & Mary L. Rev. 285.

47. Rainwater, "Poverty in the United States", in D. Moynihan [ed.], Toward a National Urban Policy (1970),195 at 200.

48. Carota et al., A Report of a Study Made of Welfare Groups in St. John, Montreal, Winnipeg, Calgary and Victoria (1970, 10.

49. Ibid. at 10. See charts following 10 which indicate the different goals and methods of the two welfare groups in Victoria, B.C.

50. Ibid. at 69-87.

51. Ibid. at 31-32.

52. See, e.g., Labour Relations Act, R.S.O. 1960, c. 202, s. 3:

> "Every person is free to join a trade union of his own choice and to participate in its lawful activities."

and s. 50:

> "No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
>
> (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employ-

ment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

(b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act."

53. See, Briar, Welfare From Below: Recipients' Views of the Public Welfare System, in J. ten Broek et al., supra n. 4, 46 at 52-61.

> "... certain characteristics are common to many [public welfare departments]: the elaborate complexity of determining eligibility and especially of budgeting ... the low visibility, for the recipient, of agency decision-making processes and of appeal opportunities and procedures; the comparative powerlessness, from the recipient's viewpoint, of the line social worker — the person with whom he must deal — in the decisions made about his assistance grant; ...
>
> Our findings suggest that the presence of these characteristics — common to many public welfare agencies — serves to reinforce and thereby perpetuate recipients' conceptions of themselves as suppliants rather than rights-bearing citizens."

54. See, e.g., Vaca v. Sipes (1967), 386 U.S. 171, 87 S. Ct. 903; Cox, "Rights Under a Labour Agreement" (1956), 69 Harv. L. Rev. 601; Hanslowe, "The Collective Agreement and the

Duty of Fair Representation" (1963), 14 Lab. L.J. 1052; Summers,"Individual Rights in Collective Agreements: A Preliminary Analysis" (1960), 9 Buffalo L. Rev. 239.